

**§ 124.86 Motions.**

(a) Any party may file a motion (including a motion to dismiss a particular claim on a contested issue) with the Presiding Officer on any matter relating to the proceeding. All motions shall be in writing and served as provided in §124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional 10 days by the Presiding Officer for good cause shown.

(c) Notwithstanding §122.4, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory provision issued or made available after the issuance of the permit under §124.15. The Presiding Officer shall grant any motion to apply a new statutory provision unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of CWA, and when no party would be unduly prejudiced thereby.

**§ 124.87 Record of hearings.**

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the hearing record and shall be available to the public except as provided in §§122.7 (NPDES) and 270.12 (RCRA), in the Office of the Regional Hearing Clerk, as soon as it is received in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall certify and file with the Regional Hearing Clerk:

- (1) The original of the transcript, and
- (2) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of

the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than 30 days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

**§ 124.88 Proposed findings of fact and conclusions; brief.**

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions of law and a brief in support thereof. Briefs shall contain appropriate references to the record. A copy of these findings, conclusions, and brief shall be served upon all the other parties and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

**§ 124.89 Decisions.**

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties, and any interlocutory decisions under §124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision 30 days after its service unless within that time:

- (1) A party files a petition for review by the Environmental Appeals Board pursuant to §124.91; or